may allow to intervene, shall be entitled to be heard and to introduce evidence. The commission shall issue process to enforce the attendance of all necessary witnesses. At the conclusion of such hearing the commission shall make and render findings concerning the subject-matter and facts inquired into and enter its order based thereon. A copy of such order, certified under the seal of the commission, shall be served upon the person or corporation complained of, or his or its attorney, which order shall, of its own force, take effect and become operative twenty days after the service thereof, except as otherwise provided, and shall continue in force either for a period which may be designated therein or until changed or abrogated by the commission. Where an order cannot, in the judgment of the commission, be complied with within twenty days, the commission may prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order. A full and complete record shall be preserved of all proceedings had before the commission, or any member thereof, or any assistant commissioner, on any formal hearing had, and all testimony shall be taken down by a stenographer appointed by the commission, and the parties shall be entitled to be heard in person or by attorney.

In case of an appeal from any order or decision of the commission, under the terms of section 68 and 69 of this Act, a transcript of such testimony, together with all exhibits or copies thereof introduced and all information secured by the commission on its own initiative and considered by it in rendering its order or decision (and required by this Act to be made a part of its records) and of the pleadings, records and proceedings in the case, shall constitute the record of the commission: *Provided*, that on appeal from an order or decision of the commission, the person or corporation taking the appeal and the commission may stipulate that a certain question or certain questions alone and a specified portion only of the evidence shall be certified to the court for its judgment, whereupon such stipulation and the question or questions and the evidence therein specified shall constitute the record on appeal.

Copies of all official documents and orders filed or deposited according to law in the office of the commission, certified by a commissioner or by the secretary of the com-

mission to be true copies of the originals, under the official seal of the commission, shall be evidence in like manner as the originals.

In any matter concerning which the commission is authorized to hold a hearing, upon complaint or application or upon its own motion, notice shall be given to the public utility and to such other interested persons as the commission shall deem necessary in the manner provided in the preceding section, and the hearing shall be conducted in like manner as if complaint had been made to or by the commission. But nothing in this Act shall be taken to limit or restrict the power of the commission, summarily, of its own motion, with or without notice, to conduct any investigations or inquiries authorized by this Act, in such manner and by such means as it may deem proper, and to take such actions as it may deem necessary in connection therewith. With respect to any rules, regulations, decisions or orders, which the commission is authorized to issue without a hearing, and so issues, any public utility or other person or corporation affected thereby and deeming such rules, regulations, decisions or orders, or any of them, improper, unreasonable or contrary to law, may apply for a hearing thereon, setting forth specifically in such application every ground of objection which the applicant desires to urge against such rule, regulation, decision or order. The commission may, in its discretion, grant or deny the application, and a hearing, if had, shall be subject to the provisions of this and the preceding sections.

Service of Orders—Duty of Person Served.

§ 66. Every order of the commission shall be served upon every person or corporation to be affected thereby, either by personal delivery of a certified copy thereof, or by mailing in the United States mail a certified copy thereof, in a sealed package with postage prepaid, to the person to be affected thereby or in the case of a corporation, to any officer or agent thereof upon whom a summons of a court of record may be served in an action at law. Where said persons or corporations, or both, exceed three in number, service as hereinbefore provided may be upon the attorneys or representatives of record, if any there be; and in any event, mailing in the United States mail as hereinbefore provided, shall constitute service, without additional

proof of a receipt of said certified copy or copies of said order. It shall be the duty of every person and corporation to notify the commission forthwith, in writing, of the receipt of the certified copy of every order so served, and in case of a corporation such notification must be signed and acknowledged by a person or officer duly authorized by the corporation to admit such service. Within a time specified in the order of the commission every person and corporation upon whom it is served must, if so required in the order, notify the commission in like manner whether the terms of the order are accepted and will be obeyed.

Modication of Order or Decision—Rehearing—As Prerequisite to Appeal.

§ 67. Anything in this Act to the contrary notwithstanding, the commission may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any rule, regulation, order or decision made by it. Any order rescinding, altering or amending a prior rule, regulation, order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original rules, regulations, orders or decisions. Within thirty days after the service of any rule or regulation, order or decision of the commission any party to the action or proceeding may apply for a rehearing in respect to any matter determined in said action or proceeding and specified in the application for rehearing. The commission shall receive and consider such application and shall grant or deny such application within twenty days from the date of the receipt thereof by the commission. In case the application for rehearing is granted the commission shall proceed as promptly as possible to consider the matters presented by such application. No appeal shall be allowed from any rule, regulation, order or decision of the commission unless and until an application for a rehearing thereof shall first have been filed with and acted upon by the commission. No person or corporation in any appeal shall urge or rely upon any grounds not set forth in such application for a rehearing before the commission. An application for rehearing shall not excuse any corporation or person from complying with and obeying any rule, regulation, order or decision or any requirement of any rule, regulation, order

or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission may by order direct. If, after such rehearing and consideration of all the facts, including those arising since the making of the rule, regulation, order or decision, the commission shall be of the opinion that the original rule, regulation, order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may rescind, alter or amend the same. A rule, regulation, order or decision made after such rehearing, rescinding, altering or amending the original rule, regulation, order or decision shall have the same force and effect as an original rule, regulation, order or decision, but shall not affect any right or the enforcement of any right arising from or by virtue of the original rule, regulation, order or decision unless so ordered by the commission. Only one rehearing shall be granted by the commission; but this shall not be construed to prevent any party from filing a petition setting up a new and different state of facts after two years, and invoking the action of the commission thereon.

Appeals to Circuit Court—Procedure—Powers—Burden of Proof—Collateral Attack on Orders.

§ 68. Within thirty days after the service of any order or decision of the commission refusing an application for a rehearing of any rule, regulation, order or decision of the commission, or within thirty days after the service of any final order or decision of the commission upon and after a rehearing of any rule, regulation, order or decision of the commission, any person or corporation affected by such rule, regulation, order or decision, may appeal to the circuit or superior court of the county in which the subject-matter of the hearing is situated, or if the subject-matter of the hearing is situated in more than one county, then of any one of such counties, for the purpose of having the reasonableness or lawfulness of the rule, regulation, order or decision inquired into and determined. The court first acquiring jurisdiction of any appeal from any rule, regulation, order or decision shall have and retain jurisdiction of such appeal and of all further appeals from the same rule, regulation, order or decision until such appeal is disposed of in such circuit or superior court. No proceeding to con-

test any rule, regulation, decision or order which the commission is authorized to issue without a hearing and has so issued shall be brought in any court unless application shall have been first made to the commission for a hearing thereon and until after such application has been acted upon by the commission, nor shall any person or corporation in any court urge or rely upon any grounds not set forth in such application for a hearing before the commission, but the commission shall decide the questions presented by said application with all possible expedition consistent with the duties of the commission. The party taking such an appeal shall file with the secretary of the commission, written notice of said appeal. The commission, upon the filing of such notice of appeal, shall, within five days thereafter, file with the clerk of the circuit or superior court to which such appeal is taken a certified copy of the order appealed from and within twenty days thereafter the record provided for in section 65. The party serving such notice of appeal shall, within five days after the service of such notice upon the commission, file a copy of said notice, with proof of service, with the clerk of said court to which such appeal is taken, and thereupon said circuit or superior court shall have jurisdiction over said appeal and the same shall be entered upon the records of said circuit or superior court and shall be tried therein without formal pleadings, but otherwise according to the rules governing other civil cases, so far as the same are applicable. No circuit or superior court shall permit a party affected by any rule, regulation, order or decision of the commission to intervene or become a party plaintiff or appellant in such court who has not taken an appeal from such rule, regulation, order or decision in the manner as herein provided.

A circuit or superior court to which any such appeal is taken shall have the power, and it shall be its duty, in term time or vacation, to hear and determine such appeal with all convenient speed. No new or additional evidence may be introduced in any proceeding upon appeal from a rule, regulation, order or decision of the commission, issued or confirmed after a hearing, but the appeal shall be heard on the record of the commission as certified to by it. The findings and conclusions of the commission on questions of fact shall be held *prima facie* to be true and as found by the commission; and a rule, regulation, order or decision of the commission shall not be set aside unless it clearly

appears that the finding of the commission was against the manifest weight of the evidence presented to or before the commission for and against such rule, regulation, order or decision, or that the same was without the jurisdiction of the commission. If it appears that the commission failed to receive evidence properly proffered, on a hearing or a rehearing, or an application therefor, the court shall remand the case to the commission with instructions to receive the testimony so proffered and rejected, and to enter a new order based upon the evidence theretofore taken, and such new evidence as it is directed to receive, unless it shall appear that such new evidence would not be controlling, in which case the court shall so find in its order. Rules, regulations, orders or decisions of the commission shall be held to be *prima facie* reasonable, and the burden of proof upon all issues raised by the appeal shall be upon the person or corporation appealing from such rules, regulations, orders or decisions.

When no appeal is taken from a rule, regulation, order or decision of the commission, as herein provided, parties affected by such rule, regulation, order or decision, shall be deemed to have waived the right to have the merits of said controversy reviewed by a court and there shall be no trial of the merits of any controversy in which such rule, regulation, order or decision was made, by any court to which application may be made for a writ to enforce the same, or in any other judicial proceeding.

Attorney General to Represent Commission on Appeals.

§ 68a. In all appeals from the orders and decisions of the commission, it shall be the duty of the Attorney General to represent the commission and defend its orders and decisions.

Appeals to Supreme Court.

§ 69. Appeals from all final orders and judgments entered by the said circuit or superior court, in review of rules, regulations, orders or decisions of the commission, may be taken directly to the Supreme Court by either party to the action, within sixty days after the entry of the order or judgment of said circuit or superior court, and shall be governed by the rules applying to other civil cases appealed to said Supreme Court, except that formal pleadings shall not be required.

Priority in Hearing and Determination.

§ 70. Any proceeding in any court in this State directly affecting a rule, regulation, order or decision of the commission, or to which the commission is a party, shall have priority in hearing and determination over all other civil proceedings pending in such court, excepting election contests.

Suspension of Orders Pending Judicial Review.

§ 71. The pendency of an appeal shall not of itself stay or suspend the operation of the rule, regulation, order or decision of the commission, but during the pendency of such appeal the circuit or superior court, or the Supreme Court, as the case may be, in its discretion may stay or suspend, in whole or in part, the operation of the commission's rule, regulation, order or decision.

No order so staying or suspending a rule, regulation, order or decision of the commission shall be made by the court otherwise than upon three days' notice to the commission and after a hearing, and if the rule, regulation, order or decision of the commission is suspended, the order suspending the same shall contain a specific finding based upon evidence submitted to the court, and identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner, and specifying the nature of the damage.

When any rate or other charge has been in force for any length of time exceeding one year, and such rate or other charge is advanced by the public utility and the order of the commission reinstates such prior rate or other charge, in whole or in part, no suspending order shall be allowed in any case from such order pending the final determination of the case in the circuit or superior court, or if appealed to the Supreme Court by such Supreme Court.

In case the rule, regulation, order or decision of the commission is stayed or suspended, the order of the court shall not become effective until a suspending bond shall first have been executed and filed with, and approved by the commission (or approved, on review, by the court) payabe to the people of the State of Illinois, and sufficient in amount and security to insure the prompt payment, by the party petitioning for the review, of all damages caused by the delay in the enforcement of the rule, regulation, order or decision

of the commission, and of all moneys which any person or corporation may be compelled to pay, pending the review proceedings, for transportation, transmission, product, commodity, or service in excess of the charges fixed by the rule, regulation, order or decision of the commission, in case said rule, regulation, order or decision is sustained. However, no bond shall be required in the case of any stay or suspension granted on application of the state, or of any city or other governmental body. The court, in case it stays or suspends the rule, regulation, order or decision of the commission in any manner affecting rates or other charges or classifications, may, in its discretion, also by order direct the public utility affected to pay into court, from time to time thereto to be impounded until the final decision of the case or into some bank or trust company paying interest on deposits, under such conditions as the court may prescribe, all sums of money which it may collect from any corporation or person in excess of the sum such corporation or person would have been compelled to pay if the rule, regulation, order or decision of the commission had not been stayed or suspended.

Mandamus or Injunction Proceedings at Instance of Commission—Appeal.

§ 75. Whenever the commission shall be of the opinion that any public utility is failing or omitting or about to fail or omit, to do anything required of it by law, or by any order, decision, rule, regulation, direction or requirement of the commission, issued or made under authority of this Act, or is doing anything or about to do anything or permitting anything or about to permit anything to be done, contrary to or in violation of law or any order, decision, rule, regulation, direction or requirement of the commission, issued or made under authority of this Act, the commission shall commence an action or proceeding in the circuit or superior court or in any other court of concurrent jurisdiction in and for the county in which the case or some part thereof arose, or in which the person or corporation complained of, if any, has its principal place of business, or in which the person complained of, if any, resides, in the name of the People of the State of Illinois, for the purpose of having such violation or threatened violation stopped and prevented, either by mandamus or injunction. The commission shall begin

such action or proceeding by petition to such circuit or superior court, alleging the violation or threatened violation complained of, and praying for appropriate relief by way of mandamus or injunction. It shall thereupon be the duty of the court to specify a time, not exceeding twenty days after the service of the copy of the petition, within which the public utility complained of must answer the petition, and in the meantime said public utility may be restrained. In case of default in answer, or after answer, the court shall immediately inquire into the facts and circumstances of the case. Such corporations or persons as the court may deem necessary or proper to be joined as parties, in order to make its judgment, order or writ effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that the writ of mandamus or injunction issue or be made permanent as prayed for in the petition, or in such modified or other form as will afford appropriate relief. An appeal may be taken from such final judgment in the same manner and with the same effect, subject to the provisions of this Act, as appeals are taken from judgments of the circuit or superior court in other actions for mandamus or injunction.

Penalty for Violation of Act by Corporation—Separate Offenses.

§ 76. Any public utility or any corporation other than a public utility, which violates or fails to comply with any provisions of this Act, or which fails to obey, observe or comply with any order, decision, rule, regulation, direction or requirement or any part or provisions thereof, of the commission, made or issued under authority of this Act, in a case in which a penalty is not otherwise provided for in this Act, shall, upon conviction, be punished by a fine of not less than five hundred dollars nor more than two thousand dollars for each and every offense.

Every violation of the provisions of this Act or of any order, decision, rule, regulation, direction or requirement of the commission, or any part or portion thereof by any corporation or person is a separate and distinct offense and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense.

In construing and enforcing the provisions of this Act relating to penalties, the act, omission, or failure of any

officer, agent, or employee of any public utility acting within the scope of his official duties or employment, shall in every case be deemed to be the act, omission, or failure of such public utility.

Penalty for Violation of Act by Individual.

§ 77. Every person who, either individually, or acting as an officer, agent or employee of a public utility or of a corporation other than a public utility, violates or fails to comply with any provisions of this Act, or fails to observe, obey or comply with any order, decision, rule, regulation, direction or requirement, or any part or portion thereof, of the commission, made or issued under authority of this Act, or who procures, aids or abets any public utility in its violation of this Act or in its failure to obey, observe or comply with this Act or any such order, decision, rule, regulation, direction, or requirement, or any part or portion thereof, in a case in which a penalty is not otherwise provided for in this Act, is guilty of a misdemeanor, and shall, upon conviction, be punished by a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

Actions to Recover Penalties.

§ 78. Except as otherwise provided in this Act, actions to recover penalties under this Act shall be brought in the name of the People of the State of Illinois in the Circuit or Superior Court in and for the county in which the cause or some part thereof, arose or in which the corporation complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides. Such action shall be commenced and prosecuted to final judgment by the commission. In any such action, all penalties incurred up to the time of commencing the same may be sued for and recovered. In all such actions, the procedure and rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the State in any such action shall be paid into the State treasury to the credit of the general fund. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

SUPREME COURT OF THE UNITED STATES.

No. 230.—October Term, 1937.

Natural Gas Pipeline Company of America, Appellant, *vs.* James M. Slattery, Andrew Olson, Charles E. Byrne, et al., etc.	Appeal from the District Court of the United States for the Northern District of Illinois.

[December 6, 1937.]

Mr. Justice Stone delivered the opinion of the Court.

This appeal presents the question whether the court below rightly denied an application for an interlocutory injunction restraining appellees, members of the Illinois Commerce Commission, from enforcing an order by which appellant was directed to open its records and accounts to inspection by the commission and to furnish certain statistical data for use in a proceeding pending before it. The proceeding was brought to fix rates charged for gas sold in Illinois by the Chicago District Pipe Line Company, an affiliated corporation.

Appellant, a Delaware corporation, sells in Illinois natural gas, which it transports through its pipe lines from Oklahoma to points in Illinois where, pursuant to a long term contract, it delivers the gas to the District Company, an Illinois corporation. The latter is engaged in intrastate commerce in Illinois where it sells the gas, which it purchases from appellant, to other companies which in turn distribute the gas to consumers within the state. The rates of the District Company are subject to regulation by the commission, as provided by the Illinois Public Utilities Act. All its shares of stock are owned by the Natural Gas Investment Company, an Illinois corporation, which owns 26.63% of the outstanding shares of appellant. Of the eight or nine directors of appellant, at all times since its incorporation, two have been members of the board of directors of either the Investment Company or of corporations wholly controlling it or the District Company, through stock ownership. The commission has found that the president of the District Company is president and director of the Investment Com-

pany and a director of appellant, and that a director of the District Company and of the Investment Company is a vice-president and director of appellant.

Section 8a (2) of the Illinois Public Utilities Act, Ill. Rev. Stat. 1937, c. 111⅔, § 8a, gives the commission jurisdiction over "affiliated interests having transactions, other than ownership of stock and receipt of dividends thereon, with public utilities under the jurisdiction of the commission, to the extent of access to all accounts and records of such affiliated interests relating to such transactions . . . and to the extent of authority to require such reports with respect to such transactions to be submitted by such affiliated interests, as the commission may prescribe." The subsection defines "affiliated interests" as meaning:

"(c) Every corporation, ten per centum or more of whose voting capital stock is owned by any person or corporation owning ten per centum or more of the voting capital stock of such public utility, . . .

"(f) Every corporation which has one or more elective officers or one or more directors in common with such public utility."[1]

In November, 1936, the Commission, in the exercise of its authority under the Act, began a proceeding to which the District Company was, and appellant was not, a party, to determine whether the rates charged by the District Company should be reduced. After hearing evidence, the commission found that appellant was an affiliate of the District Company and that in order to fix reasonable rates for the sale of gas by the latter, inquiry was necessary into its operating charges including the cost of gas purchased from appellant. The commission accordingly made an order, the validity of which is assailed here, directing that appellant make available for examination by the commission all of its

[1] Section 8 (a) (2) also provides that "affiliated interests" mean:

"(g) Every corporation or person which the Commission may determine as a matter of fact after investigation and hearing is actually exercising any substantial influence over the policies and action of such public utility even though such influence is not based upon stock holding, stockholders, directors or officers to the extent specified in this section.

"(h) Every person or corporation who or which the Commission may determine as a matter of fact after investigation and hearing is actually exercising such substantial influence over the policies and actions of such public utility in connection with one or more other corporations or persons with which or whom they are related by ownership or blood relationship or by action in concert that together they are affiliated with such public utility within the meaning of the section even though none of them alone is so affiliated."

accounts and records relating to transactions between it and the District Company. It further ordered that appellant file with the commission a report of the cost of property used in, and a statement of income and expenses in connection with, supplying gas to the District Company; or, in the alternative, that it report to the commission a statement of the cost of all properties used by it in the business of transporting and selling natural gas, together with a statement of the income and expenses of such operations.

In the present suit in equity, brought in the District Court for northern Illinois, petitioner prayed that appellees be enjoined from enforcing the order and that it be set aside as made without authority of state law, and on the further grounds that the statute and order are invalid because they violate the commerce, equal protection and due process clauses of the Federal Constitution. The case comes here on appeal, Judicial Code, § 266, from the order of the district court of three judges, which denied an interlocutory injunction. It held that appellant had failed to show that the order infringed any constitutional immunity or that appellant would suffer irreparable injury by reason of the action of the commission.

The court thought that the commission, in conducting the pending rate proceeding, and in investigating the reasonableness of the operating costs of the District Company, was entitled to the information it sought, which might be disclosed by an examination of appellant's accounts and records; that for that purpose the commission would have been entitled to compel their production by subpoena; and that as appellant had failed to present to the commission any objection to the breadth of the order, or to the use of an order rather than a subpoena to secure the information, no case was made for the interposition of a court of equity.

First. The appellant assails the statute as unconstitutional so far as it authorizes the commission to obtain from appellant's books and records any information bearing upon the reasonableness of the price of gas sold to the District Company. Appellant recognizes that the absence of "arm's length bargaining" between contracting affiliates is sufficient to support such an inquiry, and may be an adequate ground, in fixing the reasonable rates of a public utility company, for disregarding the price at which it purchases the commodity distributed. See *Western Distributing Co.* v. *Public Service Comm.*, 285 U. S. 119. But it is said that here the statute infringes the commerce clause and the Fourteenth Amendment

because it authorizes the inquiry without proof of common control or want of arm's length bargaining; that the Constitution forbids all inquiry as to the relations between the two companies and the prices at which the gas is sold by one to the other, in advance of proof of their common control or other evidence that the bargaining was not at arm's length. Assuming, without deciding, that the breadth of this attack relieves appellant of the necessity of applying to the commission to vacate its order before seeking equitable relief in the federal courts, see *Hollis* v. *Kutz*, 255 U. S. 452; cf. *United States* v. *Sing Tuck*, 194 U. S. 161, 167, we think that the objection is not substantial.

We can find in the commerce clause and the Fourteenth Amendment no basis for saying that any person is immune from giving information appropriate to a legislative or judicial inquiry. A foreign corporation engaged exclusively in interstate commerce within the state is amenable to process there as are citizens and corporations engaged in local business. *International Harvester Company* v. *Kentucky*, 234 U. S. 579. It is similarly subject to garnishment and writ of attachment. *Davis* v. *Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.*, 217 U. S. 157. It can be deemed to be no less subject, on command of a state tribunal, to the duty to give information appropriate to an inquiry pending there. The present investigation is not a regulation of interstate commerce and it burdens the commerce no more than the obligation owed by all, even those engaged in interstate commerce, to comply with local laws and ordinances, which do not impede the free flow of commerce, where Congress has not acted. *Smith* v. *Alabama*, 124 U. S. 465; *Red "C" Oil Co.* v. *Board of Agriculture*, 222 U. S. 380; *Minnesota Rate Cases*, 230 U. S. 352, 402-412; *Clyde Mallory Lines* v. *Alabama ex rel. State Docks Comm.*, 296 U. S. 261, and cases cited.

This Court has often recognized that the reasonableness of the price at which a public utility company buys the product which it sells is an appropriate subject of investigation when the resale rates are under consideration, and that any relationship between the buyer and seller which tends to prevent arm's length dealing may have an important bearing on the reasonableness of the selling price. *United Fuel & Gas Co.* v. *Railroad Comm. of Kentucky*, 278 U. S. 300, 320; *Smith* v. *Illinois Bell Tel. Co.*, 282 U. S. 133, 144; *Western Distributing Co.* v. *Public Service Comm., supra*, 124; *Dayton Light & Power Co.* v. *Public Utilities Comm. of Ohio*, 292 U. S. 290.

We have not said, nor do we perceive any ground for saying, that the Constitution requires such an inquiry to be limited to those cases where common control of the two corporations is secured through ownership of a majority of their voting stock. We are not unaware that, as the statute recognizes,[2] there are other methods of control of a corporation than through such ownership. Common management of corporations through officers or directors, or common ownership of a substantial amount, though less than a majority of their stock, gives such indication of unified control as to call for close scrutiny of a contract between them whenever the reasonableness of its terms is the subject of inquiry. In these circumstances appellant can hardly object to the attempted inquiry into the fairness of the price. Cf. *Corsicana National Bank* v. *Johnson*, 251 U. S. 68, 90, and cases cited; *Geddes* v. *Anaconda Copper Mining Co.*, 254 U. S. 590, 599; *Western Distributing Co.* v. *Public Service Comm., supra*, 124; *Globe Woolen Co.* v. *Utica Gas & Elec. Co.*, 224 N. Y. 483. The price itself may be found to be so exorbitant as to persuade that the bargaining was not at arm's length. *Corsicana National Bank* v. *Johnson, supra.* We cannot say that the Illinois statute is subject to any constitutional infirmity in so far as it demands access to the books and accounts of appellant or requires production of the information which the order seeks.

Second. Appellant also challenges the order of the commission as a first step in the direction of unconstitutional action. But appellant is not a party to the pending proceeding, whose ultimate concern is the rates of the District Company. In that proceeding the commission can make no order binding on appellant with respect to its own rates or its contract. Cf. *State Corporation Comm.* v. *Wichita Gas Co.*, 290 U. S. 561. There is no contention that the commission threatens to make any order modifying or cancelling either. The statute does not prescribe the effect which the commission is to give to the information sought. Assuming without deciding that it cannot rightly be made the basis for disregarding the price at which appellant sells gas to the District Company, unless as the result of the inquiry there appears to be in some form an effective single control of the two companies, we cannot also assume that the commission will arbitrarily make such use of it in fixing the District Company's rates. It will be time enough to

[2] See footnote 1, *supra.*

challenge such action of the commission when it is taken or at least threatened, *First National Bank* v. *Albright*, 208 U. S. 548; *Dalton Adding Machine Co.* v. *State Corporation Comm.*, 236 U. S. 699, and to consider whether appellant has standing to make the challenge. The commission is not to be enjoined from seeking information whose probable usefulness is established, as it is in this case, by the statutory prerequisite of partial community of management or stock ownership.

Third. Appellant urges that, in requiring statistical reports, the expense of whose preparation is said to be great, the order transcends statutory authority, or exercises it so arbitrarily as to place an unconstitutional burden on commerce and infringe the Fourteenth Amendment. It is said that equity alone can afford adequate relief because of the cumulative penalties for failure to comply with the order. See §§ 76 and 77 of the Act.

We have no occasion to consider the merits of these objections. It sufficies to say that the statute itself provides an adequate administrative remedy which appellant has not sought. By §§ 64 and 65 of the Act the commission was authorized on its own motion or on application of appellant to order a hearing to ascertain whether the present order was "improper, unreasonable or contrary to law." Section 67 authorizes the commission at any time, upon proper notice and hearing, to "rescind, alter or amend any . . . order or decision made by it." We see no reason, and appellant suggests none, for rejecting the trial court's ruling that the commission, if asked, could have modified its order, or for concluding that the commission was without authority to suspend or postpone the date of the effective operation of the order so as to avoid the running of penalties, pending application for its modification. *Porter* v. *Investors' Syndicate*, 286 U. S. 461, 470, 287 U. S. 346.

As the Act imposes penalties of from $500 to $2,000 a day for failure to comply with the order, any application of the statute subjecting appellant to the risk of the cumulative penalties pending an attempt to test the validity of the order in the courts and for a reasonable time after decision, would be a denial of due process, *Ex parte Young*, 209 U. S. 123, 147; *Missouri Pacific Ry. Co.* v. *Tucker*, 230 U. S. 340, 349; see *Wadley Southern Ry. Co.* v. *Georgia*, 235 U. S. 651, 659, but no reason appears why appellant could not have asked the commission to postpone the date of operation of the order pending application to the commission for modification. Re-

fusal of postponement would have been the occasion for recourse to the courts. Compare *Oklahoma Gas Co.* v. *Russell,* 261 U. S. 290, 293, with *Prentis* v. *Atlantic Coast Line Co.,* 211 U. S. 210; *Ex parte Young, supra,* 156. But appellant did not ask postponement.

A temporary injunction was not necessary to protect appellant from penalties pending final determination of the suit. The commission agreed not to enforce the order before the decision of the lower court on the application for interlocutory injunction. In order to give appellant opportunity to appeal here the district court stayed, for thirty days, its order denying an injunction, and by an order of a Justice of this Court the operation of the commission's order and the running of penalties were enjoined pending the disposition of the cause here.

The rule that a suitor must exhaust his administrative remedies before seeking the extraordinary relief of a court of equity, *Goldsmith* v. *United States Board of Tax Appeals,* 270 U. S. 117, 123; *Porter* v. *Investor's Syndicate, supra; Petersen Baking Co.* v. *Bryan,* 290 U. S. 570, 575; see *United States* v. *Illinois Central R. Co.,* 291 U. S. 457, 463, 464-466, is of especial force when resort is had to the federal courts to restrain the action of state officers, *Matthews* v. *Rodgers,* 284 U. S. 521, 525-526; *Porter* v. *Investors' Syndicate,* 286 U. S. 461, 287 U. S. 346; cf. *Central Kentucky Natural Gas Co.* v. *Railroad Comm.,* 290 U. S. 264, 271; *De Giovanni* v. *Camden Fire Ins. Assn.,* 296 U. S. 64, and the objection has been taken by the trial court. *Matthews* v. *Rodgers, supra.*

The extent to which a federal court may rightly relax the rule where the order of the administrative body is assailed in its entirety, rests in the sound discretion which guides exercise of equity jurisdiction. *Hollis* v. *Kutz, supra; United States* v. *Abilene & Southern Ry. Co.,* 265 U. S. 274, 282; cf. *United States* v. *Sing Tuck, supra.* But there are cogent reasons for requiring resort in the first instance to the administrative tribunal when the particular method by which it has chosen to exercise authority, a matter peculiarly within its competence, is also under attack, for there is the possibility of removal of these issues from the case by modification of its order. Here the commission had authority to pass upon every question raised by the appellant and was able to modify the order. In such circumstances the trial court is free to withhold its aid entirely until administrative remedies have been exhausted.

Affirmed.